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6  
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TIME WARNER ENTERTAINMENT-ADVANCE/  
8 NEWHOUSE PARTNERSHIP, A NEW YORK GENERAL  
PARTNERSHIP, THROUGH ITS SAN DIEGO DIVISION,  
9 DBA TIME WARNER CABLE

10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12 LEON ALPERT, an individual, on behalf of  
13 himself, on behalf of all those similarly  
situated, and on behalf of the general public,

14 Plaintiffs,

15 v.

16 TIME WARNER CABLE, INC., a Delaware  
17 corporation, and DOES 1 to 100,

18 Defendants.

CV No. 08CV00582 W WMc

**NOTICE OF LODGMENT OF EXHIBITS  
IN SUPPORT OF DEFENDANT TIME  
WARNER CABLE'S OBJECTIONS TO  
EVIDENCE PROFFERED AND  
REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF PLAINTIFF'S  
OPPOSITION TO TIME WARNER  
CABLE, INC.'S MOTION FOR  
SUMMARY JUDGMENT**

Date June 30, 2008  
Time 10:00 a.m.  
Dept: 7  
Judge: Hon. Thomas J. Whelan

**[No Oral Argument Pursuant to  
CivLR 7.1(d)(1)]**

Complaint: March 13, 2007  
FAC: May 16, 2007  
Removal: March 27, 2007

1 Defendant Time Warner Entertainment-Advance/Newhouse Partnership, a New York  
2 General Partnership ("TWC") respectfully submits this Notice of Lodgment of true and correct  
3 copies of the following exhibits in support of its Objections to Evidence Proffered and Request  
4 for Judicial Notice in Support of Plaintiff's Opposition to Time Warner Cable, Inc.'s Motion for  
5 Summary Judgment:

6 **Exhibit A:** Excerpts from the Deposition of Plaintiff Leon Alpert ("Plaintiff"),  
7 November 6, 2007.....2

8 Dated: June 23, 2008

9 DLA PIPER US LLP

10  
11 By: s/Jeffrey M. Shohet  
12 JEFFREY M. SHOHE  
13 Attorney for Defendant Time Warner  
14 Entertainment-Advance/Newhouse Partnership,  
15 a New York General Partnership  
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17  
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## **EXHIBIT A**

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

**CENTRAL DIVISION**

**LEON ALPERT, an individual, on  
behalf of himself, on behalf of  
all those similarly situated,  
and on behalf of the general  
public,**

**Plaintiff,**

**vs.**

**Case No. GIC881621**

**TIME WARNER CABLE, INC., a  
Deleware corporation, and DOES  
1 TO 100,**

**Defendants.**

**CERTIFIED  
COPY**

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**VIDEOTAPED DEPOSITION OF LEON SETH ALPERT**

**VOLUME 1**

**SAN DIEGO, CALIFORNIA**

**TUESDAY, NOVEMBER 6, 2007**

**Reported by:  
R. Denise Marlow  
CSR No. 11631**

**Job No. 75324**

LEON SETH ALPERT

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11:10:49 1 Ramos that you were going to take some legal action  
11:10:52 2 against Time Warner?

11:10:53 3 A I was pretty certain I was going to go to small  
11:10:56 4 claims court.

11:11:00 5 Q Okay. And at the time you made the decision  
11:11:05 6 to -- to do something, either go to small claims court  
11:11:11 7 or do something else, but you'd made a decision that  
11:11:14 8 your rights had been violated and that you were going to  
11:11:17 9 seek redress of those rights, you had done some of your  
11:11:20 10 own research and investigation about this. Is that  
11:11:23 11 right?

11:11:23 12 A Well, the investigation occurred when I  
11:11:28 13 received the notice from my association saying what I  
11:11:33 14 should have been paying. And I looked at my bills to  
11:11:35 15 see what I was paying for the same services, and they  
11:11:39 16 weren't the same. And I contacted Time Warner, and the  
11:11:42 17 customer service person essentially admitted that I was  
11:11:46 18 being overcharged because my bills went down after that.  
11:11:50 19 And they gave me a small credit, threw me a little bone  
11:11:55 20 that day that I had the conversation with them.

11:11:57 21 Q Okay. I'm trying to get the sequence in  
11:12:00 22 events.

11:12:00 23 You had the conversation with -- in September,  
11:12:02 24 and it was sometime after that that you decided to -- to  
11:12:05 25 pursue your claims. Correct?

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12:14:29 1 that the reason the pricing would be lower was because  
12:14:33 2 you were entitled to lower pricing as a result of the  
12:14:37 3 HOA paying your basic cable rate?

12:14:40 4 A Well, I don't know the reason why I was  
12:14:43 5 overcharged, first of all. I just knew I was being  
12:14:48 6 overcharged. Second of all, she -- I said what I wanted  
12:14:53 7 was a credit on my bill on the amount of however many  
12:14:59 8 months I was being overcharged times the amount of the  
12:15:04 9 overcharge per month. I thought perhaps I was being  
12:15:08 10 overcharged for since 2005 and most -- and up to that  
12:15:12 11 point in 2006. She said she wasn't authorized to do  
12:15:16 12 that. The best she could do was lower my rate for what  
12:15:21 13 it should be and should have been at that point in time,  
12:15:24 14 and she was willing to throw in a free month of the  
12:15:29 15 phone.

12:15:29 16 Q Now, is it your sworn testimony that there was  
12:15:31 17 no discussion with the CSR about the fact that Time  
12:15:34 18 Warner had developed a bundled rate or a bundled package  
12:15:37 19 of services which your services just happened to fit  
12:15:40 20 into?

12:15:40 21 A It's my sworn testimony that I have no  
12:15:44 22 recollection about speaking about bundles with the Time  
12:15:47 23 Warner rep, only about my bill and what I thought I  
12:15:50 24 should be paying from the homeowners association.  
12:15:53 25 That's -- that was the conversation.

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13:28:27 1 BY MR. SHOHET:

13:28:27 2 Q If you know.

13:28:28 3 A Probably not.

13:28:30 4 Q Do you think there's anything unreasonable in  
13:28:33 5 asking the customer to identify promptly to the service  
13:28:37 6 provider discrepancies in their bill?

13:28:39 7 MR. RAMOS: I'll -- I'll just object to the  
13:28:41 8 extent that has been already articulated in the  
13:28:46 9 complaint.

13:28:46 10 BY MR. SHOHET:

13:28:46 11 Q Well, I'm asking him if you think that's an  
13:28:50 12 unreasonable thing to do.

13:28:51 13 A Soon as I found out I was being overcharged, I  
13:28:54 14 did complain. And I don't think it's unreasonable to  
13:28:57 15 make the complaint within 30 days. But if she's, you  
13:29:01 16 know -- that seems to be reasonable, and I did complain  
13:29:05 17 within 30 days.

13:29:06 18 Q Okay. So your point is when you -- when you  
13:29:08 19 first had knowledge or information about your problem,  
13:29:13 20 you complained within a prompt period of time, and you  
13:29:15 21 don't think there's anything unreasonable about  
13:29:18 22 requiring customers to behave as you did.

13:29:22 23 A Asking to -- to voice your complaint in the  
13:29:27 24 same time frame as when you have the complaint  
13:29:30 25 generated, yeah, I suppose that's reasonable.

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13:30:33 1 think if it should be exactly within that complaint  
13:30:36 2 time, then I should sign something that I agree to make  
13:30:39 3 all complaints in a certain scope of time or I waive my  
13:30:42 4 rights to have that complaint. But if their policy is  
13:30:46 5 just to please tell us you have a complaint in the same  
13:30:49 6 30-day period that you found out that you have a  
13:30:51 7 complaint, that's reasonable.

13:30:53 8 BY MR. SHOHEIT:

13:30:53 9 Q Did you review at any time the customer service  
13:31:01 10 agreement with Time Warner that is the -- at least from  
13:31:08 11 Time Warner Cable's point of view, the statement of the  
13:31:10 12 agreement between Time Warner and its subscribers?

13:31:14 13 A The statement?

13:31:15 14 MR. RAMOS: Yeah, let me just object. It's  
13:31:18 15 vague.

13:31:18 16 THE WITNESS: Where is it?

13:31:18 17 BY MR. SHOHEIT:

13:31:18 18 Q I'm asking if you've ever seen it before. I  
13:31:22 19 think, Mr. Alpert, you get it when you join as a new  
13:31:24 20 subscriber, and then it's identified -- if there are  
13:31:27 21 changes, they're notified to you, and that it's  
13:31:29 22 available online or something like that. I'm not sure.

13:31:32 23 A I'm pretty sure I signed it -- something when I  
13:31:34 24 first started the service, you know, that I --  
13:31:37 25 requesting the service and accepting the service.



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13:31:39 1 Q Okay. And at that time do you recall reading  
13:31:41 2 the documents that you were given regarding the terms  
13:31:44 3 and conditions of service by Time Warner Cable?

13:31:45 4 A I have no recollection because I believe I  
13:31:49 5 signed that original document in like 1994 when I first  
13:31:53 6 moved in.

13:31:54 7 Q Okay.

13:31:55 8 A So that's really too long ago for me to recall.

13:32:04 9 Q Now, looking just for a moment again on --

13:32:15 10 A We're quickly running out of time. I'm sorry.  
13:32:18 11 It's 1:30.

13:32:18 12 MR. RAMOS: Yeah.

13:32:19 13 THE WITNESS: I have to get my daughter. I'm  
13:32:22 14 sorry.

13:32:22 15 MR. SHOHET: Okay. Fair enough. Let's go off  
13:32:25 16 the record. We'll put a stipulation on the record. You  
13:32:27 17 can go ahead, Mr. Alpert. We'll put the stipulations on  
13:32:28 18 the record.

13:32:28 19 MR. RAMOS: Well, I'm going to walk out with  
13:32:31 20 him.

13:32:31 21 MR. SHOHET: Okay. But we can't leave the  
13:32:34 22 record. You've got to come back.

13:32:35 23 MR. RAMOS: Sure.

13:32:35 24 THE VIDEOGRAPHER: Off the record? Going off  
13:32:40 25 the record, time is 1:32 p.m.

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13:32:42 1 (Off record)

13:32:43 2 THE VIDEOGRAPHER: We're back on the record.

13:37:23 3 Time is 1:37 p.m.

13:37:23 4 MR. SHOHEIT: What I'd like to do is put a  
13:37:29 5 stipulation on the record that is mindful of the fact  
13:37:31 6 that I did represent to the court that we would have a  
13:37:34 7 motion on file as of the next date, which is, I believe,  
13:37:37 8 December 21st, which is less than -- is close to within  
13:37:42 9 30 days.

13:37:43 10 How about this? Let's have the  
13:37:46 11 transcription -- let's have -- let's put a stipulation  
13:37:50 12 as follows. The court reporter will be relieved of her  
13:37:52 13 responsibilities under the code. A transcript of this  
13:37:56 14 portion of the deposition, which has not been completed,  
13:37:59 15 will be prepared. The transcript will be submitted to  
13:38:04 16 Mr. Ramos as counsel for the witness. Mr. Ramos will  
13:38:08 17 get -- will have the transcript reviewed within -- how  
13:38:25 18 long do you think it will be before you can have an  
13:38:25 19 original transcript? What's your normal turnaround?

13:38:25 20 THE REPORTER: Normal's two weeks, but you can  
13:38:25 21 specify any date, and you can have it.

13:38:25 22 MR. SHOHEIT: How about a week?

13:38:26 23 THE REPORTER: That's fine.

13:38:26 24 MR. SHOHEIT: Will that work?

13:38:28 25 Okay. So let's do, you'll get the transcript

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby certify:

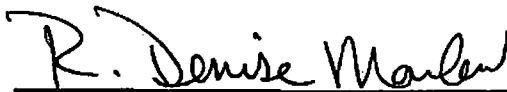
3 That the foregoing proceedings were taken  
4 before me at the time and place herein set forth; that  
5 any witnesses in the foregoing proceedings, prior to  
6 testifying, were duly sworn; that a record of the  
7 proceedings was made by me using machine shorthand  
8 which was thereafter transcribed under my direction;  
9 that the foregoing transcript is a true record of the  
10 testimony given.

11 Further, that if the foregoing pertains to  
12 the original transcript of a deposition in a Federal  
13 Case, before completion of the proceedings, review of  
14 the transcript [ ] was [ ] was not requested.

15 I further certify I am neither financially  
16 interested in the action nor a relative or employee  
17 of any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date  
19 subscribed my name.

20  
21 Dated: NOV 12 2007

22  
23   
24 R. DENISE MARLOW  
25 CSR No. 11631